

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-5288-2018 (O&M)
Reserved on:06.02.2020
Date of Decision:19.11.2020**

Sahil Bansal & others

... Petitioners

Versus

State of Punjab & others

... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Harinder Sharma, Advocate for the petitioners.

Mr. Navdeep Chhabra, Advocate for PSPCL.

Ms. Ambika Bedi, AAG, Punjab.

...

TEJINDER SINGH DHINDSA, J.

Petitioners are serving on different posts i.e. Assistant Junior Specialists (Mechanical), Supervisor Instrumentation, Auxiliary Plant Attendants-Turbo Generator Controller termed as Technical Subordinates under the Punjab State Power Corporation Limited (herein after to be referred to as 'the Corporation').

Instant petition has been filed seeking a mandamus directing the Corporation to treat the petitioners as having been appointed as a Technical Subordinates w.e.f. the date their counter-parts/batch mates had been so appointed pursuant to a common process of selection. Petitioners are further aggrieved by the action of the Corporation in denying to them consideration for further promotion to the post of Assistant Engineers only on the ground that they do not possess three years of service in the feeder cadre by taking

their actual date of joining on the post in question.

Brief facts are that the Corporation issued an advertisement dated 10.05.2012 inviting applications for selection and appointment to various posts including Junior Engineers, Auxiliary Plant Attendants, Assistant Junior Specialists and Supervisor Instrumentation etc. and collectively termed as Technical Subordinates. Petitioners being eligible and possessing the requisite qualifications applied for the post. For purposes of selection, a written test was conducted. For the post of Junior Engineer (Electrical), Auxiliary Plan Attendants (Electrical) and Assistant Junior Specialists (Electrical), the written test was conducted on 27.07.2013 and 28.07.2013. For the post of Auxiliary Plant Attendants (Mechanical), Assistant Junior Specialists (Mechanical) and Supervisor Instrumentation the test was conducted on 27.10.2013. Petitioners passed the test and secured adequate merit position to fall within the zone of appointment. They were accordingly called for scrutiny/checking of the documents. After completion of the process of selection, the Centralized Selection Committee sent the names of selected candidates including the petitioners herein to different zones for issuance of letters of appointment. Apparently, the heads of the different zones issued letters of appointment to the selected candidates on different dates. A letter of appointment to a selected Technical Subordinate (non-petitioner) was issued on 05.03.2014 (Annexure P-3). The appointment letters to the petitioners were however issued subsequently in the month of June, 2014. Promotion from the posts termed as Technical Subordinates is to the post of Assistant Engineer which is governed by the Punjab State Electricity Board (Service of Engineers) (Electrical),

Regulations, 1965. Under Regulation 10(7), 14% posts of Assistant Engineers are reserved for departmental employees (Technical Subordinates and Drawing Staff) possessing AMIE/Degree in Electrical/Electronics and Communication/Instrumentation and Control/Computer Science Engineering and who have completed 3 years of service.

The precise grievance of the petitioners is that even though they had been selected and appointed pursuant to a common selection process initiated vide advertisement dated 10.05.2012 but appointment letters were issued on different dates and the Corporation is acting unfairly in counting the three years of service as Technical Subordinates for purposes of promotion to the post of Assistant Engineers from the date of actual joining of the petitioners on the post. It has accordingly been prayed that the petitioners be granted deemed date of appointment w.e.f. the date their counter-parts/ batch mates had been so appointed pursuant to the same very selection process.

A similar issue came to be considered by this Court in **CWP-22762-2016 (Amrinder Singh Virk & others Vs. Punjab State Power Corporation Limited & others)** decided on 19.11.2020. In such case, the Corporation had issued advertisement bearing No.264/2008 inviting applications for filling up 225 posts of Junior Engineers (Electrical). The petitioners and private respondents therein had participated in a common selection process for appointment to the post of Junior Engineers (Electrical). Upon selection, appointment letters were issued on different dates. This was on account of names of the selected candidates having been sent to different zones, names of the petitioners therein had been sent to

South Zone whereas private respondents therein had been allocated to Central Zone, Patiala, where from appointment letters were issued prior in point of time. In such case, a seniority list dated 05.07.2016 had been assailed, whereby the private respondents were being treated senior to the petitioners only on the basis that they had completed three years of service on the post of Junior Engineers (Electrical) prior in point of time. The petitioners therein had sought a mandamus for issuance of directions to the Corporation to grant to them a deemed date of appointment on the post of Junior Engineers (Electrical) w.e.f. the date the first Junior Engineer (Electrical) had been so appointed pursuant to a common selection process.

The issue was dealt with in detail and it had been held as follows:

“Only on the basis that private respondents have completed three years of service on the post of Junior Engineer (Electrical) prior to the petitioners that the impugned seniority list dated 05.07.2016 (Annexure P-8) has been issued treating them to be senior to the petitioners. In the considered view of this Court, it was only due to the fortuitous circumstance of the names of the petitioners having been allocated to a different zone that the issuance of appointment letters was delayed. It is the Corporation which has to blame for such situation. In any event, it was not the fault of the petitioners as they otherwise had secured a higher merit position. The Corporation under such circumstances ought to have granted a deemed date of appointment to all the candidates on the post of Junior Engineers (Electrical) and who had participated in the same selection process. Corporation for reasons best known to it, has chosen not to do so. Under such circumstances, Rule 10.7 as also the 6th proviso to Regulation 16 of the 1965 Regulations cannot operate to the prejudice of the petitioners while

determining seniority.

*A similar issue came to be dealt with by a Division Bench of this Court in **Prem Singh and others Vs. State of Haryana, 2015 (4) SCT 578**. In such matter, the Haryana Staff Selection Commission had invited applications from eligible candidates for recruitment to the post of Clerks in different departments under the State of Haryana. The advertisement had been issued in the year 1989. A large number of candidates were duly selected and thereafter allotted to different departments. Certain candidates, who otherwise had secured a higher merit position were allotted to certain departments, where there were no vacancies and resultantly, their appointments got delayed. On the other hand, candidates, who were lower in order of merit were appointed on a prior date. Under such situation, the candidates, who were higher in merit had approached the writ Court seeking relief and to be treated as senior or at par with other candidates, who even though having been appointed much earlier, but had secured a lower merit position. The writ petition was allowed. LPA having been filed, the Division Bench in **Prem Singh's case (supra)** while affirming the view taken by the learned Single Judge held as follows:*

“12. It is undisputed that appellants and private respondents were candidates to the post of Clerk in pursuance to the advertisement issued by the Commission in the year 1989, both appellants and private respondents were in the merit list and the private respondents were more merited than the appellants, they were allotted to different departments. In so far as private respondents are concerned,, even though they were allotted to a different department, unfortunately vacancies were not available to accommodate them in the allotted department. Consequently, their appointment process was got delayed at the behest of official

respondents. At this juncture, it is to be noted that for no fault of the private respondents, their appointment process was got delayed. In other words, due to communication gap between the Commission and the Departments), the Commission committed a serious error in allotting the private respondents to a Department where vacancies of Clerks were not available, for which the private respondents should not be penalised.

xxx

xxx

xx

15. The contention of the appellants that they were appointed earlier to the private respondents, their seniority was settled and they were promoted to the next higher cadre, namely, Accountant/Kanungo (Sales) and there is inordinate delay and laches on part of private respondents, seeking relief in respect of seniority is concerned, is without any merits, firstly, at the instance of department/Government, the private respondents were denied appointment on par with the appellants. Due to fault of the department/Government, the private respondents should not be penalised in denying the service conditions on par with those who are lessor merited than the private respondents.”

Adverting back to the facts of the present case, petitioners are being treated as junior to the private respondents only on account of belated issuance of appointment letters inspite of (i) having secured a higher merit position at the stage of appointment to the post of Junior Engineer (Electrical); (ii) having been shown senior in the feeder cadre and each one of the petitioners actually being eligible in terms of possessing the requisite qualifications as also the three years experience on the lower post on the date

*they were promoted to the post of Assistant Engineers (Electrical). Following the dictum laid down in **Prem Singh's case (supra)** and for the reasons recorded herein above, the action of the Corporation treating the petitioners as juniors to the private respondents is held to be patently unjust, unfair, arbitrary and in violation of Articles 14 and 16 of the Constitution of India.*

The impugned seniority list dated 05.07.2016 (Annexure P-8) qua the petitioners and private respondents is quashed. Corporation is directed to grant to the petitioners a deemed date of appointment on the post of Junior Engineer (Electrical) w.e.f. the date the first Junior Engineer (Electrical) had been so appointed pursuant to the same very selection process initiated vide advertisement No.264/2008. Fresh seniority list in the cadre of Assistant Engineers (Electrical) be prepared thereafter and issued within a period of six weeks from the date of receipt of a certified copy of this judgment.

Writ petition is allowed in the aforesaid terms.”

In the considered view of this Court, the same reasoning as adopted in the case of **Amrinder Singh Virk's case (supra)** and as reproduced herein above, would cover the claim of the petitioners herein.

In view of the above, writ petition is allowed. Corporation is directed to treat the petitioners to be appointed as Technical Subordinates w.e.f. 05.03.2014 i.e. the date when their counter-parts/batch mates had been so appointed pursuant to a common selection process. Petitioners would also be entitled to all consequential benefits in the nature of seniority, re-fixation of pay and consideration for promotion to the higher post by taking their initial appointment w.e.f. 05.03.2014.

It is, however, made clear that re-fixation of pay of the petitioners would be on notional basis and they would not be paid arrears

of salary for the period they have not actually worked on the post.

Writ petition is allowed in the aforesaid terms.

19.11.2020

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

- | | | |
|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |